

House Bill 138

By: Representatives Coan of the 101<sup>st</sup>, Shaw of the 176<sup>th</sup>, O'Neal of the 146<sup>th</sup>, Rogers of the 26<sup>th</sup>, Millar of the 79<sup>th</sup>, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 13 of the Official Code of Georgia Annotated, relating to contracts, so as to  
 2 provide for the rejection of construction contracts when contractors, subcontractors, low tier  
 3 subcontractors, or materialmen do not provide required insurance coverage; to provide for the  
 4 definitions of certain terms; to prohibit an owner, contractor, or subcontractor from rejecting  
 5 work completed, rejecting material supplied, or withholding payment due to lack of  
 6 conforming insurance following acceptance of a policy or certificate of insurance; to provide  
 7 certain exceptions; to provide for related matters; to provide for an effective date; to repeal  
 8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Title 13 of the Official Code of Georgia Annotated, relating to contracts, is amended by adding  
 12 a new chapter as follows:

13 "CHAPTER 12

14 13-12-1.

15 (a) As used in this chapter, the term:

16 (1) 'Certificate holder' means an owner, contractor, subcontractor, or lower tier  
 17 subcontractor who, through a contract to improve real property, to perform construction  
 18 services, or to perform construction management services, requires a contractor,  
 19 subcontractor, lower tier subcontractor, or materialman to obtain insurance and show  
 20 evidence of coverage.

21 (2) 'Contractor' means a person who contracts with an owner to improve real property, to  
 22 perform construction services, or to perform construction management services for an  
 23 owner.

1 (3) 'Lower tier subcontractor' means a person other than a contractor having a direct  
2 contract with a subcontractor.

3 (4) 'Materialman' means any person furnishing materials.

4 (5) 'Materials' means those items for which liens are permitted under Chapter 14 of Title  
5 44 and tools, appliances, machinery, or equipment used in making improvements to the real  
6 estate, to the extent of the reasonable value or the contracted rental price, whichever is  
7 greater, of such tools, appliances, machinery, or equipment.

8 (6) 'Owner' means a person who has an interest in the real property improved, for whom  
9 an improvement is made, and who ordered the improvement to be made. An owner includes  
10 private persons and entities and state, local, or municipal government agencies,  
11 instrumentalities, or entities.

12 (7) 'Subcontractor' means, but is not limited to, subcontractors having privity of contract  
13 with the contractor.

14 (b) A certificate holder may accept the policy or certificate or may reject it as being  
15 nonconforming before the date the contractor, subcontractor, or lower tier subcontractor  
16 commences work or the materialman delivers material.

17 (c)(1) If a certificate holder does not reject the policy or certificate in writing and state  
18 the specific reason for the rejection before the date the contractor, subcontractor, or lower  
19 tier subcontractor commences work or the materialman delivers material, the certificate  
20 holder shall be deemed to have accepted the policy or certificate for work performed or  
21 materials supplied prior to the time the policy or certificate is specifically rejected in  
22 writing; provided, however, that the certificate holder shall not be deemed to have accepted  
23 a policy or certificate if:

24 (A) The policy or certificate was knowingly and fraudulently altered; or

25 (B) The certificate reflects coverages or conditions that are not contained in the  
26 underlying policy.

27 (2) A certificate holder shall not be deemed to have accepted a policy or certificate for  
28 work not yet performed or materials not yet supplied on the date the certificate holder  
29 rejects the policy or certificate as being nonconforming.

30 (3) After a policy or certificate is accepted, or deemed to be accepted, a certificate holder  
31 shall not use the lack of conforming insurance as a reason to reject work previously  
32 completed by a contractor, subcontractor, or lower tier subcontractor, to reject materials  
33 previously supplied by a materialman, or to withhold payment for work previously  
34 completed or for material previously supplied; provided, however, that the certificate  
35 holder may reject work previously completed or material previously supplied or may  
36 withhold payment for such work or materials if:

1 (A) The policy or certificate provided by the contractor, subcontractor, lower tier  
2 subcontractor, or materialman was knowingly and fraudulently altered;

3 (B) The certificate reflects coverages or conditions that are not contained in the  
4 underlying policy; or

5 (C) The policy is canceled, nonrenewed, or materially and adversely altered during the  
6 term of the construction contract.

7 (d) If the owner, contractor, or subcontractor rejects a policy or certificate as  
8 nonconforming in writing and states the specific reasons for rejection, any provision of the  
9 contract requiring such insurance is enforceable, and payment may be withheld for work  
10 performed or materials supplied after the date of the rejection of the policy or certificate."

11 **SECTION 2.**

12 This Act shall become effective on July 1, 2007.

13 **SECTION 3.**

14 All laws and parts of laws in conflict with this Act are repealed.